

Joseph R. Saveri (State Bar No. 130064)
Steven N. Williams (State Bar No. 175489)
Joshua P. Davis (State Bar No. 193254)
James G. Dallal (State Bar No. 277826)
Anupama K. Reddy (State Bar No. 324873)
Christopher K.L. Young (State Bar No. 318371)
JOSEPH SAVERI LAW FIRM, INC.
601 California Street, Suite 1000
San Francisco, California 94108
Telephone: (415) 500-6800
Facsimile: (415) 395-9940
Email: jsaveri@saverilawfirm.com
swilliams@saverilawfirm.com
jdavis@saverilawfirm.com
jdallal@saverilawfirm.com
areddy@saverilawfirm.com
cyoung@saverilawfirm.com.com

Lead Counsel for the Direct Purchaser Class

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE CAPACITORS ANTITRUST LITIGATION
THIS DOCUMENT RELATES TO THE DIRECT PURCHASER CLASS ACTION

Master File No. 3:17-md-02801-JD
Civil Action No. 3:14-cv-03264-JD

**PROFFER OF HIROYUKI IMAI'S
COCONSPIRATOR STATEMENT
TESTIMONY PURSUANT TO RULE
801(d)(2)(E)**

STATEMENTS TO BE ADMITTED

Ex. No. 119 MATSUO 00000478	Date: June 17, 2010
Document Author: Satoshi Okubo (Matsuo)	Speaker(s): Tomohide Date (NEC Tokin) Hideaki Sato (NEC Tokin)
Statement:	

Statements:

MK Meeting report reflects the following statement of NEC Tokin's Tomohide Date or Hideaki Sato (Imai attends):

- “With respect to the manganese products, there are moves underway among the competitors (in particular, AVX/KEMET) for price increase or refusal to accept orders, as well as a move by Nichicon of a large price increase.” (Imai, Vol. 1, 2/20/20 at 130:13-18)

Facts:

- The proffered statement itself is a fact that shows the declarant was a co-conspirator.
 - Minutes of an MK meeting. ELNA hosted. NEC Tokin personnel provided information regarding competitors to the participants of the MK meetings. Participants discussed increasing prices and not accepting orders as well as a Nichicon-specific large price increase.
 - NEC TOKIN's Tomohide Date remains a fugitive indicted for criminal price-fixing.

Ex. No. 616 **Date:** September 30, 2009
ELNA_NDCAL-00028510
Document Author: **Speaker(s):**
Hiroyuki Imai (ELNA) Hiroyuki Moriyama (ELNA)

Statements:

Email from ELNA's Moriyama to Imai stating:

- “I am sending you the business card of Mr. Shirakata, whom you had contacted me about.”

Facts:

- ELNA's Moriyama sends Imai the business card of NCC's Shirakata
 - Shirakata was an associate of NCC's Matsuzaka and Rubycon's Miyashita, two fugitives indicted by U.S. DOJ for price-fixing, and NCC and Rubycon engaged in illicit price coordination to customers including Philips, Delta and Emerson.

Ex. No. 624 **Date:** June 16, 2010
ELNA_NDCAL-00307594_EN
Document Author: **Speaker(s):**
Hideaki Sato (NEC TOKIN) Hideaki Sato (NEC TOKIN)
Hideaki Ochiai (Holy Stone)

Statements:

Email from NEC Tokin's Sato to Imai regarding the MK Meetings stating:

- “Regarding tomorrow’s Market Research Group, I will not participate in it, and Date [NEC Tokin] has not decided whether to participate in it either. In case Date will not make it, I have Ochiai’s [Holy Stone] portion, so would it be possible to introduce it to everyone?”

- 1 • “Mr. Ochiai’s recent status is as follow [sic]: As for the status of the material price
 2 increase and the limitation of material volume, we have somehow been managing to
 3 secure for the production portion. Due to a sudden demand increase in China, we are
 4 strategically shifting to manganese. We have started increasing the price of manganese
 5 significantly regardless of whether it is in or out of the country.”

6 **Facts:**

- 7 • NEC Tokin’s Hideaki Sato reports to ELNA’s Imai he and NEC Tokin colleague
 8 Tomohide Date will not be attending the meeting. Sato reports he also has the
 9 information from Holy Stone’s Hideaki Ochiai and reports both NEC Tokin’s
 10 information and Holy Stone’s information for dissemination at the MK meeting
 11 evidencing the regular business of the conspiracy
 12 • Ochiai reports on confidential nonpublic price and cost information for sharing with
 13 competitors at the MK meeting

14 **Ex. No. 626**

15 PAN- CU004116295

16 **Date:** August 11, 2010

17 **Document Author:**

18 Shinichi Torii (SANYO)

19 **Speaker(s):**

20 Shinichi Torii (SANYO)

21 **Statements:**

22 Email “report[s] on each company’s trend” from Torii to others in SANYO. Imai testifies he
 23 attended MK meetings with Torii. Under NEC TOKIN, document reads in part “As for
 24 manganese, the peak has passed, but supply is still very much insufficient. Price increases will
 25 not decrease orders. Due to a significant supply decrease by KEMET, AVX, etc., the supply is
 26 still very much insufficient.” Under ELNA, document reads in part “There are still order
 27 backlogs for ECAP, but not so much after October. For PCs, they are decreasing after July.”

28 **Facts:**

- 29 • Meeting minutes from Sanyo’s Shinichi Torii, who Imai recognizes as a contemporary
 30 and regular participant in the MK meetings.
 31 • Torii recounts dissemination of confidential nonpublic supply related information
 32 about KEMET and AVX disseminated by NEC Tokin (likely Hideaki Sato or Tomohide
 33 Date)

34 **Ex. No. 2339**

35 ELNA_NDCAL-01299209

36 **Date:** April 22, 2008

37 **Document Author:**

38 Tomohiro Inoue (ELNA)

39 **Speaker(s):**

40 Hiroyuki Imai (ELNA)

41 **Statements:**

42 Email from Tomohiro Inoue attaching information gathered from ATC meeting to Imai and
 43 others. Imai testifies the substance of the ATC meetings are similar to MK meetings.

44 **Facts:**

- 45 • Imai, who never attended the ATC meetings but was a regular attendee of the MK
 46 meetings, would be a regular recipient of information from the ATC meetings
 47 • Imai receives an email from ELNA colleague Inoue with attached ATC materials. Imai
 48 would testify the information shared was similar to the information from the MK
 49 meetings which would be shared amongst other executives at ELNA evidencing the
 50 regular business of the conspiracy

- 1 • Inoue also participated in the MK meetings, including with Imai, and will testify that
 2 he regularly attended from 2009 to December 2013, the second to last MK meeting

Ex. No. 8316

ELNA_NDCAL-01299209

Document Author:

Yukitoshi Hayashi (Rubycon)

Date: July 19, 2000**Speaker(s):**

Hiroyuki Imai (ELNA)

Statements:

Rubycon minutes of an ECC meeting held at Yuai Hall. Attendees included Company C [Nippon Chemi-Con]'s Isawa and Company S [SANYO]'s Nishiyama. The first section reports "Status of price increase" from July 1. The second section notes instructions on "How to increase prices in the future" and "Price increase plan: Request a price increase of more than 3% across the companies. Aiming to achieve a weighted average of 2% increase." The third section lists attendees assigned to negotiate price increases with specific customers identified by name.

Facts:

- Imai previously testified as to this document in his capacity as the ELNA 30(b)(6) corporate designee. Imai recognized two individuals from ELNA attended this meeting.
- Imai testified that the personnel involved in the ECC meetings were among the highest echelons of the corporate hierarchy. Imai recognizes NCC's Isawa, who remains a fugitive indicted by DOJ, who Imai testifies he has had regular conspiratorial contacts with, including as contemporaries at the MK meetings
- Meeting minutes evidence explicit pricing agreements to specific customers evidencing the regular business of the conspiracy
- Imai testifies that he believes the minutes to be memorializing price-fixing agreements

Ex. No. 8321

MATSUO 00067689

Document Author:

Akitsugu Miyanishi

Date: August 2, 2013**Speaker(s):**

Hiroyuki Imai (ELNA)

Takaumi Fukaura (NEC TOKIN)

Statements:

Meeting report of Joint Meeting that Imai attends includes statements by NEC TOKIN's Fukaura on page 1:

- "Apple's weight accounts for most of the sales this year, and some of the parts makers have had a huge impact with the trends of the iPhone 5, but the situation has turned out that our company is greatly being swayed by the Mac Air."
- "In the sales of smartphones, Apple went down once, and after that, it has been flat. It is due to global sales being down for Samsung."

Facts:

- Imai testifies he was a regular attendee of what were called "Joint" meetings. Joint meetings would explicitly cover both domestic and overseas markets.
- NEC Tokin shares information about Apple at this meeting. Imai was in attendance along with ELNA colleague Shin Kinoshita. Imai testifies that the United States and .S. markets were important points of discussion for joint meetings

Ex. No. 8973	Date: February 9, 2007
UCC-CAP-00848370	
Document Author: Tsuneo Ohta (NCC)	Speaker(s): Takuro Isawa (NCC) Yukihiro Harima (ELNA)

Statements:

NCC Group employees complain that Imai offered the lower price and report on efforts to get ELNA to rescind quote and/or to keep market share by contacting Imai's superior in ELNA Japan, Mr. Harima.

From Ohta 2/8/2007 e-mail to numerous NCC group employees (including Kakizaki, USA): "Subject: RE: The mater of Alpine price revision resistance"

From Ohta to Isawa 2/9/2007 e-mail:

"1) Thank you for checking the facts today with ELNA (Mr. Harima). I also subsequently checked with Mr. Harima about the following by telephone. ...

* Since the policy at ELNA headquarters was to not cut prices, it has been decided to talk to ELNA Europe (Mr. Imai), revoking price offerings. As a result it was decided to have you do this by the 12th.

* It was decided that ELNA Europe will present a second price estimate by February 16. ...

2) Since we cannot think of an appropriate reason for ELNA Europe (Mr. Imai) to revoke the price, it's very hard to imagine how to revoke it. ... I believe in the worst-case scenario we keep share by dropping prices about 5% focused on the best four or five model numbers in order by highest volume from among the common part numbers (23S) judged to have had prices lowered by them. (Perhaps weighted average, with rate of price cut similar to ELNA.)" (Imai 55:21-24; 56:16-17; 57:9-12; 57:25-58:8)

From Isawa to Ohta 2/15/2007 e-mail:

"Dear Mr. Ohta, Isawa here. ELNA's Mr. Harima apologized to me regarding the Alpine matter. Mr. Imai will reportedly return to Japan. (Imai 60:10-13)

Facts:

- Email exchange evidence bilateral contact evidencing the existence of the conspiracy between NCC personnel including fugitives Tsuneo Ohta and Takuro Isawa regarding a price bid made by ELNA's Imai to Alpine Hungary. Isawa indicates he contacted Imai's superior, Yukihiro Harima, who apologized for Imai's low price quote to Alpine.
- Isawa indicates that Harima apologizes to Isawa for the low price bid evidencing reassurance to other members of the conspiracy
- Harima indicates that ELNA will attempt to revoke the low price bid. Because revoking the price bid would be suspicious, ELNA and NCC decide not to revoke ELNA's low price bid, and NCC would lower price in lockstep to maintain market share

Ex. No. 8974	Date: February 9, 2007
ELNA NDCAL-01032355	
Document Author: Hiroyuki Imai (ELNA)	Speaker(s): Hiroyuki Imai (ELNA) Yukihiro Harima (ELNA)

Statements:

Internal ELNA emails between Imai and Harima. ELNA side emails corroborating the incident described in Ex. 8973. Harima scolds Imai for lowering the quote to Alpine Hungary after NCC personnel contacts Harima.

Text from Harima to Imai 2/9/2007 e-mail:

“3. Information from Chemi-Con

3-1: From Mr. Maekawa of Alpine, ELNA did a single-handed price decrease on RV. 3-2: If it stays this way, we'll lose our share!! What are you doing?? After all!

What in the world are you all thinking ???” (Imai 85:24-86:3; 86:5-11; 86:13-23)

Text from Harima to Imai e-mail (no date):

“Mr. Imai

1: There was a call from Mr. Ohta of ECC. ECC is leaving the price as it is this time.

3-1: if possible, will withdraw the price decrease, and leave it as it is.”

Text from Imai to Harima 2/10/2007 e-mail regarding ECC complaining to Harima about ELNA lowering price quote to Alpine:

“The last time, too, they said, let's raise the prices, and they lowered them. They're cunning fellows, taking the RV share.”

Facts:

- ELNA side emails of the episode described in exhibit 8973. ELNA's Yukihiko Harima scolds Hiroyuki Imai for offering a low price bid to Alpine Hungary after learning of the information via “Chemi-Con” personnel
- Harima indicates that ELNA will attempt to revoke the lower price bid

Ex. No. 8975

MATSUO 00077990

Date: March 7, 2014

Document Author:

Takeshi Matsuzaka (NCC)

Speaker(s):

Shoe Ide (Rubycon)

Statements:

Email from NCC's Matsuzaka organizing bar gathering for regular participants of MK meetings including ELNA's Imai two months after the breakup of MK:

E-mail regarding meeting scheduled for 3/18/2014 states:

“This time, I have changed the preference from a Japanese-style bar and we'll do it at a Spanish bar. ... We will use a secret? Room where you go up the stairs that are in the back of the shop. They'll guide you if you give them my name. (I'm not making the reservations under the company name)”

Ide (Rubycon) responds on 3/10/2014 to confirm his attendance.

Facts:

- NCC's Takeshi Matsuzaka sends an email to regular attendees of the MK meetings including ELNA's Imai in March 2013, two months after the last MK meeting which took place in January 2013 evidencing a desire to continue the conspiratorial meetings. Matsuzaka indicates that the meeting is being organized to take place in a “Secret room” indicating an attempt to conceal the conspiracy
- Rubycon's Shoe Ide, a regular participant in the MK meetings, responds his participation may be possible
- Imai testifies the putative meeting never occurs due to the discovery of the conspiracy

1 Dated: March 3, 2020

Respectfully Submitted,

2 JOSEPH SAVERI LAW FIRM, INC.

3 By: /s/ Joseph R. Saveri

4 Joseph R. Saveri

5 Joseph R. Saveri (State Bar No. 130064)
6 Steven N. Williams (State Bar No. 175489)
7 Joshua P. Davis (State Bar No. 193254)
8 James G. Dallal (State Bar No. 277826)
9 Anupama K. Reddy (State Bar No. 324873)
10 Christopher K.L. Young (State Bar No. 318371)
11 JOSEPH SAVERI LAW FIRM, INC.
12 601 California Street, Suite 1000
13 San Francisco, California 94108
14 Telephone: (415) 500-6800
15 Facsimile: (415) 395-9940
16 Email: jsaveri@saverilawfirm.com
17 swilliams@saverilawfirm.com
18 jdavis@saverilawfirm.com
19 jdallal@saverilawfirm.com
20 areddy@saverilawfirm.com
21 cyoung@saverilawfirm.com

22 *Lead Counsel for the Direct Purchaser Class*